V

THE 'CONSTITUTION OF MEDINA'

IT is indeed a strange circumstance that the so-called 'Constitution of Medina' should have attracted so little attention from historians, be they Muslim writers or Western orientalists. Yet, from the historical standpoint, this document is of as much interest, and even importance, for the early history of Islam as the Qur'ān itself—and it is unquestionably authentic. The only other documents that can be considered of equal, or nearly equal, historical value to the 'Constitution' (as I shall refer to it for convenience, though I dislike the term since it does not properly convey what it really is) are those letters from the Prophet's correspondence which have still been preserved for us. For, though I hold, with other orientalists, that the more famous letters to Caesar, Chosroes, and the Negus are not genuine, the rather less well-known correspondence of the Prophet with the Arabians, such as the people of Najrān, the Jews of Ailah, and others, is not forged, and these letters form a source for the interpretation of the 'Constitution' and even for the Qur'ān itself. This assessment of their authenticity I base on both their language and content.

Unfortunately I cannot very well lay a text of the 'Constitution' in front of you;[1] the existing English translation is very inaccurate, and I cannot assume a close knowledge of it in even a predominantly Muslim audience. So I should therefore first say that the 'Constitution' consists of about fifty clauses, and that it is stated to have been written by Muḥammad between the *Muhājirūn*, the *Anṣār*, and the Jews during the early days after his arrival in Medina. Its contents, in brief, are, firstly, the defining of specific treaty relations of mutual aid between these groups, the action to be taken against those who break the said treaties and against persons within the allied groups who commit crimes, along with the procedure to be observed in dealing with offenders. Secondly, special sections or documents deal with the position of the Jews in relation to the other groups. In this document or, more correctly, series of documents

[1] It has not been possible to provide this lecture before going to press with the appropriate textual references, owing to my imminent departure for South Arabia. Most however will be easily traced in standard works and when my work on this subject is completed references will be provided. This is merely an outline sketch of a very extensive inquiry.

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there is nothing that can be described as religious—it is a strictly practical set of agreed procedures.

The 'Constitution' appears for the first time in the *Sīrah* of Ibn Isḥāq, in Ibn Hiṣhām's recension, where, apparently, it is treated as one single document, whereas the whole of my argument is based upon the consideration that it is, in actual fact, a whole body of distinctly separate documents. From the *Sīrah* other authors, like Ibn Kaṯhīr in his *Bidāyah*, transmit the 'Constitution', but, when you scrutinize the great mass of *Ḥadīṯh* or Tradition, there is very little reference to it indeed, although some clauses from it are quoted by Abū Dā'ūd in his *Sunan*, and a clause here and there, perhaps, by Bukhārī and Ibn Ḥanbal. In examining it, therefore, I have relied on Ibn Isḥāq's text. At this point I ought to say that, though I have been studying the document for some years, and we quite recently formed a group at the School of Oriental and African Studies to read it together, much of what I have to offer is at present interim and exploratory. So, while I believe the general tenor of what I say is correct, there is much of detail to add, possibly to modify, as I slowly manage to assemble the evidence from the vast range of source material.

Let me commence with the curious and interesting history of the document, or rather series of documents, itself.

Ibn Isḥāq, the Prophet's biographer, appears to have flourished from approximately 85 A.H. to 151 A.H. He was a *mawlā* or client of the Quraiṣh clan of 'Abdullāh b. Qais b. Makhramah b. 'Abd al-Manāf, the last-named being a late convert to Islam. But the important, and indeed highly significant fact is that, according to Yāqūt's *Mu'jam al-'Udabā'*, Ibn Isḥāq was exclusively devoted to 'Abdullāh b. Ḥasan b. Ḥasan, and he used to come to him and say, '"*aṯhbit hādhihi fī 'ilmi-ka*", *fa-yuṯhbitu-hu wa-yarwī/yurwī-hi 'an-hu*'. That is to say, '"Confirm this from your information", and he would verify it, and Ibn Isḥāq[1] would transmit it on his authority.' Now 'Abdullāh b. Ḥasan was the chief of the 'Alawīs in his day, treated with favour by the Umaiyads, and, at first, by the 'Abbāsids —by whom, however, he may have been murdered in 144 A.H. Here is the obvious source of the 'Constitution'—a person from whom Ibn Isḥāq *could* have copied it; and in whose hands, were it preserved at all, would it more likely be found than in those of the chief of the 'Alawīs? Ibn Isḥāq gives no *isnād*, but from Ibn Hiṣhām's recension of the *Sīrah* it seems that 'Abdullāh b. Ḥasan's name only figures thrice anyway[2] whereas, as we have seen, from Yāqūt's account, Ibn Isḥāq greatly relied upon him.

[1] Or, 'he would make him transmit it on his authority'. The second reading appears less likely to me.

[2] If the entries in the index to A. Guillaume, *Life of Muhammad* (Oxford, 1955), are complete.

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This is most relevant as we shall see, because the authors of the Six Books of Tradition quote, in various versions, a *ḥadīth* that 'Alī was asked if he had any documents from the Prophet that were not in the Qur'ān. Abū Dā'ūd states that 'Alī said, '*Mā katabtu 'an Rasūl Allāh illa 'l-Qur'ān wa-mā fī hādhihi 'l-ṣaḥīfah*', i.e. 'I wrote down from the Apostle of God only the Qur'ān and what is on this sheet.' In Bukhārī's version, 'Alī answered, when asked what was on the *ṣaḥīfah* or sheet (and I must point out that *ṣaḥīfah* is the word employed in the 'Constitution' to refer to itself), '*al-'aql wa-fikāk al-'asīr wa-'an lā yuqtala muslim-un bi-kāfir-in*', i.e. 'the blood-money, release of the prisoner, and that a Muslim be not slain in retaliation for a Kāfir'. Another version of the same *ḥadīth* avers that 'Alī's document stated that Medina was *ḥarām*—a sacred enclave,[1] and yet another version maintains that it stated that the *ummah* should not give shelter to a criminal (*muḥdith*). These traditions have been brought together by the Shāfi'ī writer al-Jazarī in *Asna 'l-Maṭālib*,[2] and each and all of these phrases occur in one or another of the constituent documents of the 'Constitution', though al-Jazarī does not, it is true, cite *isnād*s going back to 'Abdullāh b. Ḥasan.

Certain traditions say that 'Alī kept this document in the scabbard (*qirāb*[3]) of his sword, or, according to Ṭabarānī, in the *baṭn* of his sword. To those unfamiliar with Arabia it may seem rather strange that 'Alī should keep an important paper there, but to this very day in Southern Arabia, tribesmen do carry documents in a little leather pocket behind the scabbard of their daggers, along with a small knife and other instruments.

In Shī'ite traditions also there is reference to this document, though their evidence would tend to suggest that it was in the possession of Ja'far al-Ṣādiq rather than, as I have suggested, 'Abdullāh b. Ḥasan. In *al-Dharī'at ilā taṣānīf al-Shī'ah*, Muḥammad al-Ṭihrānī states that 'Alī wrote, at the dictation of Muḥammad, *kitābāt* which were concealed with the 12th Imām. Abū Ja'far al-Bāqir produced a document in order to settle a point upon which he was at difference with al-Ḥakam b. 'Uyainah, a pupil of Ja'far al-Ṣādiq, and it should be noted that Ibn 'Uyainah is one of the names in Bukhārī's *isnād* for his own reference to the 'Constitution'. It was a '*kitāb mudraj 'aẓīm*', i.e. 'a large folded', or 'rolled-up, writing'. Again I must remark that this is precisely what tribesmen do when they keep any document in a dagger-pocket—they fold it up in a sort of pencil or spill shape, with folds about half an inch deep. The Shī'ah, then,

[1] Cf. my 'Ḥaram and Ḥawṭah, the Sacred Enclave in Arabia', in *Mélanges Ṭaha Ḥusain*, publiés par 'Abd al-Raḥmān Badawī (Le Caire, 1962), which should be read conjointly with this lecture.

[2] Muḥ. b. Muḥ. al-Jazarī, *Asna 'l-Maṭālib fī Manāqib 'Alī b. Abī Ṭālib* (Mecca, 1324 A.H.), p. 36.

[3] According to Lane's *Lexicon* the *qirāb* is a sort of case into which one puts one's sword and its scabbard along with other objects as well.

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trace back the document in question to Ja'far al-Ṣādiq, *'wa-qāla 'l-Ṣādiq inna-hu jama'a-hu min al-kitābi 'lladhī huwa imlā' Rasūl Allāh'*. They add that it was the *'khaṭṭ 'Alī b. Abī Ṭālib'*, i.e. in 'Alī's own hand. It is specifically distinguished from other Shī'ite writings such as *al-jafr*, &c., which non-Shī'is hold spurious. It is said to have contained *'al-'ādāb wa-'l-sunan wa-aḥkām al-ḥalāl wa-'l-ḥarām'*, about thirty *bait*s, or, as we should say, thirty clauses. It would thus appear to be rather shorter than the 'Constitution' as we know it, but this Shī'ite tradition is, at least, in line with Sunnī tradition and, where it amplifies it, the details may be described as helpful.

The first point that emerges from the Shī'ite account is that the original, or at any rate Ja'far al-Ṣādiq's copy or version of it, disappeared with the 12th Imām, and, so far as we know, has never appeared since. Secondly, Ja'far al-Ṣādiq's copy or version, being shorter than the 'Constitution', could actually have been an abstract of it. My hypothesis at present however is that Ja'far al-Ṣādiq's copy was limited to what I have named documents 'A' and 'B', which taken together would, according to my numbering, amount to a little under thirty clauses. Nearly all the remaining documents in the series deal with Muḥammad's relations with the Jews, and since the political situation with regard to the Jews was completely altered by their expulsion from Medina, there would, in later times, be no particular legal relevance in the agreements concluded with them in Muḥammad's earlier days. Ja'far al-Ṣādiq is almost exactly contemporary with the putative holder of the 'Constitution' document, 'Abdullāh b. Ḥasan b. Ḥasan, but of course they belonged to two different and even rival branches of the 'Alī'id house. It seems to me possible however that, as a descendant of the senior branch, 'Abdullāh b. Ḥasan may have held the original of the 'Constitution', and not Ja'far al-Ṣādiq.

So much for the history of the actual document—in so far as I have been able to trace it up to the present. I must now turn to the history of the actual conclusion of the agreements which form the so-called 'Constitution', under the presiding genius of the Prophet.

Tradition quotes Anas b. Mālik as saying, 'The Apostle of God contracted an alliance (*ḥilf*) between Quraish and the *Anṣār* in my house.' Another version runs, 'between the *Muhājirūn* and the *Anṣār*'. A further passage, which I have taken from Ibn al-Athīr's *Nihāyah*, affirms that Anas b. Mālik stated that two *ḥilf*s were made in his house between the *Muhājirūn* and *Anṣār*—that is, the Prophet made a brotherhood (*ākhā*) between them, and he made a treaty (*ḥilf*). In point of fact, the first document, 'A' of the series, might perhaps be described under the term he employs, 'made a brotherhood'. The incident in the *Sīrah*, of course, which immediately follows the 'Constitution', is the description of the

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'brotherhood' which the Prophet set up between certain individual *Muhājirūn* and *Anṣār*, and it could be argued that this is one of the two *ḥilf*s which are mentioned, but I take a contrary view and am inclined to maintain that the two *ḥilf*s are documents 'A' and 'B' of the 'Constitution'. Let me remark here also that the chronology of the *Sīrah* is very uncertain, and the various authorities differ as to the exact dating of events, sometimes to the extent of two or three years.

Al-Balādhurī puts the matter in this way. 'When the Apostle of God came to Medina', he says, 'he wrote between them [the Aws and Khazraj] and the Jews of Yathrib a *kitāb*, and made a pact with them (*'āhada-hum 'ahd-an*).' This statement then not only covers documents 'A' and 'B' but probably also some of the specifically Jewish agreements that follow them. Al-Wāqidī, in his *Maghāzī*, gives the following version:

> When the Apostle of God came to Medina, the Jews, all of them, made a truce (*ṣulḥ*) with him, and between himself and them he wrote a *kitāb*. The Apostle of God affiliated every tribe (*qawm*) to their allies (*ḥalīf*), and placed between himself and them an *amān* [which I translate as, 'security, guarantee of mutual security']. He also made a stipulation upon them and among them that they should not aid an enemy against him. When the Apostle of God overcame the people of Badr and came [back] to Medina some Jews broke (*qaṭa'a*) what was between them and the Apostle of God by way of treaty (*'ahd*).

The next step in exploring the 'Constitution' and the documents of which it is composed is obviously to refer them to the Qur'ān, then, following this, to the Traditions, to examine allusions in the Qur'ān to *'ahd*, *mīthāq*, and *ṣaḥīfah*, for, at the very least, it would seem probable that it should contain some reference to this very important set of agreements embodied in the so-called 'Constitution'. So let me say, without further ado, that, in my view, many Qur'ānic verses concerned with *'ahd* seem to allude to one or more parts of the 'Constitution' documents. In Sūrat Āl 'Imrān, verses 70 seq.[1] seem to imply that the contracting parties to the *'ahd* took an oath to observe it. There are admonitions to those who should break the *'ahd*. Sūrat al-Baqarah, verse 38, says to the Jews, 'Fulfil my *'ahd* and I shall fulfil your *'ahd*.' According to Muslim doctrine these are the words of God, but I should imagine that there is no conceptual objection to regarding the 'Constitution' documents as *'ahd Allāh*. In Sūrat al-Baqarah, verse 77, a lengthy passage seems to refer directly to the *mīthāq*, and again, in Sūrat al-Tawbah, verse 76, I am inclined to see a reference to the *'ahd* and to a refusal to pay monies which the parties to certain of the documents embodied in the 'Constitution' had contracted to pay. However, these are but a few passages among many which may be referring to the 'Constitution' documents, and even

[1] I have used the European numbering of Qur'ānic verses.

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the word *kitāb* may, in some instances, mean the *kitāb* which Muḥammad wrote between the *Muhājirūn* and *Anṣār* and Jews, but all such suggestions must remain tentative until each passage has been carefully examined in conjunction with Ṭabarī's *Tafsīr*, a most voluminous work, for the factual explanation that Ṭabarī assigns to Qur'ānic passages, along with an historical context, is much more useful in this context than the theological-philosophical interpretation of Zamakhsharī–Baiḍāwī.

To turn now to the contents of the document, let me first describe the method I have evolved and the assumptions I have made—these assumptions I naturally consider valid, but of their validity you must judge for yourselves. When I re-read the 'Constitution' some seven years ago, following upon much field research into Arabian tribal law, the close similarity between the two in their content and style of expression struck me at once. Making careful use of the standard lexicons I proceeded to re-translate the 'Constitution', and to interpret it in the light of contemporary Arabian life as I know it. In the process of eliciting the true sense of the text it was essential to read widely in ancient literature, but I steadily became the more convinced that the Prophet was no innovator, that he accepted, with comparatively minor modifications, the ethical code and social framework of his time, but of course he insisted that this ethical code be strictly observed. With the 'Constitution' I also compared certain documents (ranging over the last 200 years) which I had copied out in Southern Arabia, especially those relating to the sacred enclaves.[1] Here again there is a striking resemblance between these more or less contemporary documents and the 'Constitution' in respect of language and content—and I must insist that the tribal language of South Arabia is not derived from the Qur'ān but is in direct descent from the Arabic of the *Jāhilīyah*. To me this method appears to have been successful, and it seemed to make sense of the 'Constitution', which had previously considerably puzzled European scholars.

First of all I split up the 'Constitution' wherever the language itself dictated a division—namely wherever there is to be found a terminating formula such as, '*Wa-'inna 'llāha 'alā abarri hādhā*', or '*Wa-'l-birru dūna 'l-ithm*'. In the case of document 'B', as I have termed it, the concluding phrase runs, '*Wa-'inna-kum mahmā 'khtalaftum fīhi min shai'in, fa-'inna maradda-hu ila 'llāh . . . wa-ilā Muḥammad.*'

This last clause implies that if any dispute should arise over the contents of the document, or, I think, their application, the affair is to be referred to Allāh, represented of course by Muḥammad at Medina. In a modern tribal document[2] I published a similar injunction to refer back, not to

[1] Cf. p. 5, note 1.
[2] 'Two Tribal Law Cases', *Journal of the Royal Asiatic Society* (London, 1951), p. 159.

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Allāh in this instance of course, but to a judge, if there should arise any question as to his decision.

The 'Constitution', then, divided itself into eight distinct documents—but while the division at once resolved the inconsistencies apparent when you regard it as a single document, it immediately raised a series of formidable new problems. Fortunately, however, I regard these problems as ultimately soluble by close study of the early literature.

First of all, every agreement that I have seen today in Arabia bears the signatures of the contracting parties as also the name of the person who wrote out the document. These are lacking, nor is there any indication of the Prophet's seal, whereas, even today, Arabian documents often bear a seal-impression above the written text. However, I recall that, in Lower 'Awlaqī country, I saw a series of documents embodying certain tribal rights, written consecutively—not broken up into distinct clauses or separate documents, although dates were indicated; the signatures too were omitted. Now, from the evidence of the Qur'ān itself, it would seem that an oath was taken by all parties to the 'Constitution'[1] so I can only suppose that they signed each agreement with some such formula as, '*X* son of *Y*, representing the tribe *Z*, undertakes to Allāh (and to Muḥammad) to keep to the aforegoing.' I surmise also that the 12 *naqībs*, who, from their biographies in the *Usd al-ghābah*, were evidently tribal chiefs, must have been among the signatories. But, since numbers of signatures are tiresome to copy, and yet more tiresome to read, it is likely that Ibn Isḥāq saw nothing more than a transcript of the actual clauses of the 'Constitution'—in fact, Ja'far al-Ṣādiq, as shown above, is held by the Shī'ah authorities to have made a transcript of exactly this nature.

The second major problem is that of the chronology of the eight separate documents—and it is on this aspect of the inquiry that my more recent researches have been largely concentrated.

That one of the documents, probably 'A'—if not also 'B'—was written in the Year 1 A.H., as Ibn Isḥāq reports, we need not doubt. Some of the shorter documents look like codicils or appendices to the earlier agreements.

Let us however take document 'F'—which declares that the Jawf of Yathrib is *ḥarām* to the people of this sheet (*ṣaḥīfah*). This I interpret to mean that Medina is thereby declared a *ḥaram* or sacred enclave, but tradition, as conveyed for instance by Samhūdī, places the creation of the *Ḥaram* of Medina after the Prophet's return from Khaibar, that is to say,

[1] Whether the Jews took this oath or not I cannot say, though a scrutiny of Qur'ān commentary might enlighten one on this point. The leaders of the tribes could, of course, take the oath which would have to be made, by Allāh, or to him, or, perhaps, by something sacred. The tribal leaders could take the oath which would cover the conduct of the Jews if these were in client relation to the tribes I presume, and the case of whether a Jewish oath would be acceptable may not have arisen here. This possibly informative line of inquiry requires pursuing.

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in the Year 6 or the Year 7. Myself I should have been inclined to suggest that the declaration of the *ḥaram* could have taken place some time after the failure of the Prophet's enemies to take Medina at the battle of al-Khandaq at the earliest, and what more suitable occasion could there be for declaring Medina a sacred enclave than when it had just manifested its holiness by repelling the invader? Yet, surprisingly enough, this document opens with clauses in which the Jews are spoken of as paying *nafaqah* along with the Muslims. From this one might deduce that the *ḥaram* was created when, at least, the Jewish tribe of Quraiẓah still remained in Medina, but many strong reasons, into which I cannot enter here, have impelled me to a simpler explanation, namely that this clause has somehow become misplaced and belongs to the next preceding document which deals with the Jews.[1]

In document 'G', which immediately follows, we find what appears to be a pact to defend the city. Because it patently reveals the weakness of the Prophet's party at Medina it may fairly be taken to have been concluded after his reverse at Uḥud, or just before the battle of al-Khandaq. Since it contains an allusion to parity for the Jewish *mawālī* (allies or clients?) of the Aws, but not for the *mawālī* of the Khazraj tribe, the latter being the Banū Qainuqā', we may justifiably infer that, at the earliest, it must have been concluded after the expulsion of the Qainuqā' from Medina. Possibly it could have been concluded before or after the expulsion of the Jewish Banū Naḍīr, but in my view it would be after their expulsion, and certainly before the destruction of Quraiẓah. It may well be this document to which there is so much allusion by all the parties concerned with the plot of the Quraiẓah Jews against Muḥammad. It is known that certain of them were unwilling to break this bond with Muḥammad, and of course, in the event, their failure to keep to it brought them annihilation.

Close study of the internal evidence of the several documents reveals many indications of a difference in date. In document 'B' for example, an agreement which may be assigned to Year 1, the Prophet is simply named 'Muḥammad', with '*ṣalla 'llāhu 'alai-hi wa-sallama*' following, it is true, but this expression may not be original to the document. Whereas in documents 'F' and 'H' he is designated '*Rasūl Allāh*', the Apostle of God. From this it may be inferred that his claim to the title of 'Apostle of God' was not accepted by all parties to the first contract—as in fact we know

[1] It has to be taken into account that the early *ṣaḥīfah* was probably of a shape such as that of the Kūfic Qur'ān found in the Wādī Daw'an in Ḥaḍramawt, and now in the Library of the School of Oriental and African Studies. This would be, very approximately, about 4 in. by 3 in. in size. In the copying of the 'Constitution' I think some of the leaves at the end may have got misplaced. One possible solution might be to propose that 'G' should follow immediately after the first two clauses of 'F', which then would read quite appropriately as the first two clauses of 'G'. If 'F' should really be inserted after 'G' then 'H' would follow on suitably as an appendix to it.

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from the *Sīrah* itself that this was contested by many of the Medinans. By the time the later agreements were concluded, however, opposition to Muḥammad's claim to the title 'Apostle of God' would have disappeared.

I should now like to give a summary consideration to the actual contents of the 'Constitution', document by document, pausing to treat in rather greater detail the more important of the agreements.

Document 'A' is composed of twelve clauses, the first of which runs, 'This is a writing (*kitāb*) from Muḥammad the Prophet between the *Mu'minūn* and *Muslimūn* of Quraish and Yathrib, and those who follow them and join them, and strive[1] along with them.' Our research group at the School has discussed at some length, and with reference to the lexical evidence, what exactly *Mu'minūn* meant at this early stage of the new religion. Though, as yet, we have arrived at no final conclusion, it does seem to us that in the initial stages at Medina, and of course in the Meccan period, a *Mu'min* might well have been a person who guaranteed *amān* or security, though we are not prepared to exclude the possibility of its bearing other senses also. The *Muhājirūn* are called Quraish, but, in a later document in the series, 'Quraish' quite unequivocably means Muḥammad's enemies, the Meccan Quraish. At the moment I incline to the view that *Muslim* was a more general term than *Mu'min* and included the Prophet's followers belonging to the *ḍa'īf* or non-tribal class—who were in no position to guarantee *amān* or security. It is important to remark also that at this date the city is named Yathrib, and not yet al-Madīnah.

The second clause goes on to state, 'They are one *ummah* (community), apart from the people.' This clause is, in my view, one of the most important statements on the early formation of Islam. Orientalists have discussed the concept of the *ummah* at length, and a number of views have been advanced, but I regret to say that I do not find my own in agreement with them.

This clause has no less than nine sub-clauses. In these the *Muhājirūn* and the tribes of Khazraj and of Aws are recognized as responsible for paying their own blood-money and ransoming their own prisoners, '*'alā rib'atihim*', which can be rendered as, 'according to their custom'—understand, 'existing custom'.[2] Subsequent articles stipulate that any person who becomes a Muslim but has no tribal affiliation must be protected by the *ummah*, i.e. the community, that no *Mu'min* must ally himself to an ally or client (the latter is probably the correct sense in the context) of another *Mu'min*, that all *Mu'mins* must take action against an aggressor even

[1] The Arabic is *jāhada*, but the later senses of *jihād* may possibly be inappropriate here.

[2] There are various readings and renderings of this word.

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though he be the son of one of them, that no *Mu'min* is to be slain in retaliation for a *Kāfir*.[1] The protection of God (*dhimmat Allāh*) is one, and the meanest of the *ummah* may guarantee security. The *Mu'minūn* are not to conclude a separate peace or truce, and they will take their turns in raiding. Moreover they will become what is called in modern parlance a *diyah*-paying group in wars in the 'Way of Allāh', that is to say, in fighting outside Medina. The Jews who follow us, states the agreement, are to have parity and support. The final article states that the *Mu'minūn muttaqūn* are on the straightest path. I propose here to take *muttaqūn* as meaning not 'God-fearing' in this context, but as derived from *naqiya*, and in the sense of 'those who honourably discharge their obligations'.[2]

Now, by my understanding of it, we have here a treaty which, in effect, forms a tribal confederation from a number of tribes more or less independent of one another. It is entirely political, not religious, for it simply provides the structure of political unity—in fact, with a slight alteration of names it could be the very type of agreement Arabian tribes conclude today. There is even an expression used in some parts of South Arabia nowadays to mean a confederation, *lummīyah wāḥidah*, semantically related to the word *ummah*. This, as already suggested, could then be the first alliance concluded in the house of Anas b. Mālik, for it seems that the Prophet, on his arrival at Yathrib, dealt with first things first—that is to say, he presided over negotiations terminating in an agreement which had as its object the creation of a sound political structure of unity between the tribes—not of Medina town and oasis as the phrase the 'Constitution of Medina' would imply. Nevertheless I think he had in mind, from the outset, the formation of a theocracy, and here I must differ from Shaikh Khālid al-Khālid when he denies that Islam is a theocracy—if one is not to distort history it seems abundantly clear that it was a theocracy in its early stages. To comprehend how the *ummah* operated we must naturally turn to the Qur'ān and the *Sīrah*, but we do know from the pre-Islamic inscriptions of South Arabia (now beginning to be read with understanding, and a most important source of information whereby we may more fully understand the formative days of Islam) that there were communities in Arabia centred round the sanctuaries of local gods. I have argued in my article on sacred enclaves[3] that these communities would guarantee the inviolateness of a *maḥram*, as it was called, probably a sacred enclave with a shrine, corresponding in pattern to the *Ḥaram* of Mecca. It is not, I think, to be reckoned any diminution

[1] *Kafara* can mean 'to declare oneself dissociated from something'. Might it be suggested that it could sometimes mean to be dissociated from, such as the documents under discussion?

[2] I have drawn this sense from Ḥaḍramī Arabic, but there are clichés in Classical Arabic that tend to help the sense proposed.

[3] Cf. p. 5, note 1.

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of the significance of the Prophet's mission that he should follow a pattern of organization, social and religious, so general in ancient Arabia, and enduring right up to this present age of ours.

The next document, 'B', possibly the second alliance concluded in the house of Anas b. Mālik, is an extension of 'A', five additional articles. As stated earlier, these two documents with a total of twenty-seven articles fall not far short of that document with 'about thirty' which Ja'far al-Ṣādiq saw. The extra stipulations are, in summary, that no *Mushrik* may accord protection to the property or person of Quraish, that is to say, the *Muhājirūn* of Quraish; all *Mu'mins* must take up arms against anyone who slays a *Mu'min*; they are neither to aid nor shelter an unprovoked aggressor—and a curse and strenuous measures will be taken against anyone who does. Finally, Muḥammad is made the *maradd*, as the present-day tribes of Southern Arabia would call it, in differences concerned with the agreement. The Prophet is hereby recognized as a sort of arbitrator or authority on the law as between the several tribal groups that are party to the agreement, and it is in this sense that I hold that words such as *maradd* and *marji'*, when they occur in the Qur'ān, must frequently, if not invariably, be understood. In South Arabia these terms are applied to tribal heads or individual tribesmen who are expert in tribal customary law. From many passages in the Qur'ān, however, it appears that the Prophet waged a stubbornly contested struggle before he got all the tribes of Medina to refer disputed cases to him, and not to the old tribal judges of paganism.

The third document, 'C', deals almost solely with the Jews. It lays down that they must pay *nafaqah* along with the *Mu'mins* while the latter continue fighting, but it does constitute them an *ummah*, a community, along with the *Mu'mins*, each side retaining its own '*dīn*', a word which, one must remember, can mean 'law' as well as 'religion'. In 'C' where religion is discussed, the word '*Muslim*' is used in contradistinction to 'Jews', but the word '*Mu'min*' employed in earlier documents concerned with tribal affairs is not employed as a contrast to 'Jews'. Various clauses allude to the Jews *of* the separate Aws and Khazraj tribes. This has given our study group much food for thought, for while, personally, I hold that the *Yahūd Banī Najjār*, for instance, means the Jews protected by the Banū Najjār belonging to the Jewish tribes of Yathrib, some of my colleagues take the view that these were, or included, Jewish converts among these Arab tribes themselves. We have both cited texts to support our opposing points of view! The social order of Arabia, then and now, I am of opinion, could not admit of such a state of affairs, but the question still remains open and unsolved. Document 'C', along with all subsequent documents in the series, terminates in a phrase employing a formula

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from the root *barra*; this must be derived from the sense, *barra bi-yamīni-hi*, in one form or the other in which it appears.

Document 'D', consisting of six articles, and dealing mainly with the Jews and their clients, seems to be an appendix to 'C', but I am still rather puzzled as to the exact interpretation of the clauses. Document 'E', with three articles, is perhaps another appendix; it stipulates that the Jews must pay their *nafaqah*, and the Muslims their *nafaqah*. I believe *nafaqah* to have been almost a technical term at this period for a sort of tax or levy which the Medinans had agreed to pay the Prophet in order to enable him to meet the expenses inevitably connected with his position—and I propose to derive '*Munāfiqūn*' from this basic sense. That is to say, it refers to those who shared in paying *nafaqah*, but did so with a very bad grace, and while they could not but submit to the will of the majority of Medinans, they were in actual fact opposed to the Prophet.

Document 'F' is the instrument whereby Yathrib is declared a *ḥaram*, to be dated about the Year 6 or 7. For the first time in this series, Muḥammad is called '*Rasūl Allāh*', and it is reiterated that all disputes must be referred to Allāh and to Muḥammad. One interesting clause declares that a woman (if you agree that *ḥurmah* means 'a woman' in the context) shall only be accorded protection by permission of her people—this is reminiscent of the post-Ḥudaibiyah period when Muḥammad had a rather similar arrangement to this with the Meccans.

Document 'G' appears to be out of chronological order, for it ought to precede 'F' as I hope to show. It opens with the statement that Quraish and anyone aiding Quraish are not to be accorded protection. Quraish, as already remarked, here means the Meccans, not the *Muhājirūn*. It goes on to lay down that 'they', presumably the Medinans are meant, will support each other against any party attacking Yathrib. A third clause says that if they are summoned to conclude a peace they will do so, by which I think one must understand that, if the Prophet decided upon a peace, then the Medinans would accept it. The Jews of the Aws are proclaimed to be in the same category as 'the people of this sheet (*ṣaḥīfah*)'; these Jews must be the Banū Quraiẓah. This then is the treaty which the Jewish Ḥuyaiy al-Naḍrī persuaded Ka'b b. Asad of the Quraiẓah tribe to break. As the *Sīrah* says, 'Ka'b broke his promise and cut loose from the bond that was between him and the Apostle.' The indications that this agreement was concluded before the battle of al-Khandaq appear to me evident and unmistakable.

Document 'H' consists of three articles only. I am inclined to think it is related to 'F' (which constitutes the Jawf of Yathrib a sacred enclave), for it states that 'this writing will not interpose between a criminal and offender', and 'he who goes out is safe, and he who stays in al-Madīnah

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is safe, except the criminal'. (Medina is here mentioned for the first time in the series.) Allāh, it says, is the *jār* or protector of the person who '*barra wa-'ttaqā*', which I translate as, 'fulfils his undertaking and [thereby] keeps his honour clean'. These articles simply mean that Allāh will protect in Medina those who observe the rules of the *Ḥaram* or sacred enclave, but it may not be used as a refuge for criminals.

As I have already remarked, even if you accept my general thesis on the division of the 'Constitution' document, many problems remain to be solved. The most obstinate of them all so far has been the exact status of the Medinan Jews. The terms *mawlā* and *ḥalīf* by which they are categorized are ambiguous, for *mawlā* means both 'lord' and 'client', a *ḥalīf* can be equal or of lesser standing, just as *jār* also means a protector and a protected person. There is every indication that manual labour and the crafts were despised by the ancient Arabian tribes just as they are by the moderns, and I therefore hold that the Qainuqā' silversmiths cannot have been of equal standing with the tribesmen. Some Arabic writers inform us that, previous to Islam, the blood-money of a Jew was less than that of an Arab, but that the Prophet raised it to parity with that of the Arabs. His action may have been not merely an attempt to conciliate them, but possibly taken in order to raise the status of *ḥaḍar* groups in relation to that of the tribes. To be protected implies a lesser status than that of the protector, but on the other hand the Jews did, to some extent, engage in fighting also.

It will be noted that, apart from general provisions about blood-money, &c., the documents really say virtually nothing about law.

The first two agreements, then, lay down the political basis of the *ummah*, to be followed later by the creation of the *Ḥaram*, the sacred enclave of Madīnat al-Nabī, then, through the coalescence of the two *Ḥarams* of Mecca and Medina into al-Ḥaramain, we have the basis and pattern upon which the Prophet was able to construct his theocratic state. From his subsequent correspondence with the tribes it is plain that the pattern of security agreement between the tribes of Medina was simply extended to include other and yet more tribes in the Arabian peninsula. The '*dhimmat Allāh*' comprised both tribal elements and *ḍa'īf* non-tribal groups like the Jews of Ailah. It could be extended to comprise communities like the Christians of Najrān and Christian groups which did not have an inferior status to tribesmen.

To suppose that the Prophet *conquered* Arabia would be a misconception. He did of course, from time to time, dispatch punitive expeditions when security was broken, or make military demonstrations to induce other groups to join in the peace—but his control of Arabia was gained by persuasive and political means. The tribes which accepted Islam, leaving

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aside the consideration that they had to accept monotheism and destroy their idols, had no need to make much change in their way of life, and the very shape and form of the security agreements concluded with them was unquestionably already familiar. From a passage in al-Marzūqī's *Kitāb al-Azminah* it can be perceived that Quraish, before the rise of Muḥammad, controlled much of Arabia in a very similar way.

In order to realize the process by which the Prophet gained *political* power, it is essential to give this key series of documents its proper treatment and interpretation. I hope that in our examination of them we may have made a beginning in this direction.

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